

EXHIBIT 1

Expert Report of Robert Lochhead, Ph.D., submitted on
December 15, 2006, in L'Oréal S.A. v. Estée Lauder Co.,
Civil Action No. 04-1660 (HAA) (D.N.J. filed Apr. 7, 2004)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

L'ORÉAL S.A. and L'ORÉAL USA, INC.,

Plaintiffs,

v.

THE ESTÉE LAUDER COMPANIES INC.,
ESTÉE LAUDER INC., and
ORIGINS NATURAL RESOURCES INC.,

Defendants.

Civil Action No.: 04-1660 (HAA)

HIGHLY CONFIDENTIAL
SUBJECT TO
PROTECTIVE ORDER

EXPERT REPORT OF ROBERT Y. LOCHHEAD, Ph.D.
IN RESPONSE TO EXPERT REPORTS BY ESTÉE LAUDER'S EXPERTS



University of Strathclyde. I was later awarded a Fulbright Scholarship to pursue post-doctoral research at Carnegie-Mellon University from 1973-75.

4. From 1970 to 1978, I held the title Scientist and Manager at Unilever Research in Isleworth, England where I worked in the areas of polymer synthesis and colloid and surface science to support research and development of personal care and cosmetic products. From 1979 to 1990, I was employed at BF Goodrich. I started as a Research Associate and eventually became BF Goodrich's R&D Manager for Hydrophilic Polymers. At BF Goodrich, I worked primarily in the areas of polymer synthesis and scale-up, applications research, surface and colloid science, and formulation science for cosmetics, pharmaceuticals, detergents, home and institutional care products and textile print-pastes. In 1990, I became an Associate Professor in the Department of Polymer Science at the University of Southern Mississippi. I have remained at the University of Southern Mississippi since 1990 and am currently a professor in The School of Polymers and High Performance Materials and the Director of the Institute for Formulation Science. During my time at the University of Southern Mississippi, I have held a number of other positions including Chair of the Department of Polymer Science (1993-1999), Chair of the School of Polymers and High Performance Materials (1999-2000), Director of the School of Polymers and High Performance Materials and Chair of the Department of Polymer Science (2000-2001), Dean of the College of Science and Technology (2001-2003), and Interim Director of The School of Polymers and High Performance Materials (2004-2006).

5. I have also been active in cosmetics organizations. I have been an active member of the Society of Cosmetic Chemists (SCC), serving as President of the SCC in

1994. In 2000, I received the highest scientific award of that organization, *The Maelon G. DeNavarre Medal Award* for outstanding contributions to the science and art of cosmetics. In December 2008, I was awarded the National Merit Award of the SCC. In addition, I currently serve on the International Nomenclature of Cosmetic Ingredients Committee of the Cosmetic, Toiletry and Fragrance Association (CTFA), which is responsible for assuring that the INCI names conform to established conventions, reflect the chemical structure and the composition of the material they represent, and are not misleading. I have periodically been a consultant to the CTFA since the mid-1990's.

6. My curriculum vitae, Exhibit 1 to my previous reports, identifies my publications and patents for at least the past ten years.
7. I have testified as an expert at trial or by deposition in the following cases in the preceding four years:

Revlon Consumer Products Corporation v. The Estee Lauder Companies, Inc. Estee Lauder, Inc. and Origins Natural Resources, Inc., Civil Action No. 00-CIV-5880 (RME), in the United States District Court, Southern District of New York;

3M Innovative Products Company and 3M Company v. Dentistry International Inc., Civil Action No. 04 C 0463 S, in the United States District Court for the Western District of Wisconsin; and

LP Mathews, LLC v. Bath & Body Works, Inc.; Limited Brands, Inc.; KAO Brands Co. (f/k/a The Andrew Jergens Company); and KAO Corporation, Civil Action No. 04-1507 (SLR), in the United States District Court for the District of Delaware.

8. The compensation paid for my work in connection with this matter is \$325.00 per hour, which was my standard consulting rate for both testifying and non-testifying time at the time I was retained to work on this case.

of the invention that "use is preferably made of laododecane" (See also, translation of French priority application at page 24). Further evidence that the inventor contemplated that her invention encompassed a masoars including laododecane is provided in original claim 21 of the specification, as filed (page 45, line 10), which states "the composition as claimed in one of the preceding claims, characterized in that the volatile solvent is chosen from . . . laododecane" (See also, translation of French priority application at claim 19, page 42). These sentences would convey to those skilled in the art that the inventor had contemplated that her invention encompassed masoars containing laododecane at the time she filed her application.

(iii) "at least one polymer chosen from ethylenediamine/ stearyl dimer tallow copolymer"

13. It is my opinion, there is sufficient written description in the specification, as filed, for one skilled in the art to reasonably conclude that the inventor also had possession of the concept that the masoars would further include "at least one polymer chosen from ethylenediamine/ stearyl dimer tallow copolymer." The specification discloses at page 15, line 23 to page 16, line 9 that "examples of structuring polymers which can be used in the composition according to the invention, of the commercial products sold by Bush Boake Allen under the names Uniclear 80 and Uniclear 100. They are sold respectively in the form of an 80% (as active material) gel in a mineral oil and a 100% (as active material) gel. They have a softening point of 88 to 94 °C. These commercial products are a blend of a copolymer of a C₂₂ diacid condensed with ethylene-diamine, with an average molecular mass of approximately 6000." (See also, translation of French priority application at page 14).

14. Based on a letter from the Cosmetic Toiletry and Fragrance Association ("CTFA") to Arizona Chemical Company (the manufacturer of Uniclear) (CTFA 00001 to 2), I understand that the CTFA had assigned to Uniclear the INCI name, ethylenediamine/ tall oil dimer acid/ stearyl alcohol copolymer as of December 14, 1999. This means that after that date anyone skilled in the art could contact the CTFA and learn the identity of the chemical entity corresponding to the trade name Uniclear. Ethylenediamine/ tall oil dimer acid/ stearyl alcohol copolymer and ethylenediamine/ stearyl dimer tallow copolymer are two different names for the same chemical entity. Uniclear is the trade name for this chemical entity. (Vol. 1, International Cosmetic Ingredient Dictionary and Handbook (3rd ed. 2002), at 606). Thus, persons skilled in the art reading the disclosure in the specification, as filed, of using Uniclear as a structuring polymer in the invention would have understood that the inventor contemplated use of ethylenediamine/ stearyl dimer tallow copolymer as the structuring polymer to use in the mascara compositions of her invention at the time she filed her application.

(iv) "water"

15. It is my opinion that there is sufficient written description in the specification, as filed, for one skilled in the art to reasonably conclude that the inventor also had possession of the concept that the mascara would further include "water." The specification discloses at page 8, lines 16 to 19, that "the composition of the invention . . . can be an oil-in-water or water-in-oil emulsion . . ." (See also, translation of French priority application at page 8). The specification also discloses at page 26, lines 1 to 3 that "the composition of the invention can additionally comprise, as additive, an aqueous phase comprising water. . ." (See also, translation of French priority application at page 26). Further evidence that the inventor contemplated that her invention

340. I would describe the Accused Products cited by Dr. Kaler (129) as viscous creams that include a gel.

341. While the Pavlin '657 patent, cited by Dr. Kaler (130-S1), may define its gels as requiring "a substantial quantity of solvent," and not being as hard as a stick or wax, I do not believe the meaning of gel is so limited. The quantity of solvent in a gel does not need to be substantial. A gel can be hard or firm as a stick or wax, a soft material, and everything in between.

III. MATERIALS REVIEWED

342. Attached as Exhibit B is a list of information and documents that I have considered in forming my opinions stated in this report.

Date: 12/15/2006


Robert Y. Leach, Ph.D.